

REQUEST FOR COUNCIL ACTION

SUBJECT:

A Resolution approving a Development Agreement by and between Gardner Village LC and the City governing the development on the NE corner of 7800 South and 1300 West.

SUMMARY:

The City Council ratified the Planning Commission decision on density for the Station at Gardner Mill project with conditions, one of which was the execution of a Development Agreement limiting the development of the NE corner of 7800 South and 1300 West. This Development Agreement accomplishes this result.

FISCAL IMPACT:

No fiscal impact.

STAFF RECOMMENDATION:

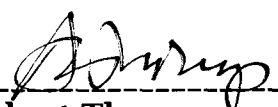
Staff recommends APPROVAL of the Development Agreement.

MOTION RECOMMENDED:

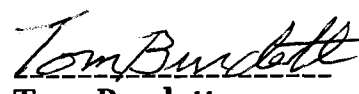
"I move that the City Council adopt and approve Resolution ~~14-220~~ approving a Development Agreement by and between Gardner Village LC and the City governing the development on the NE corner of 7800 South and 1300 West, and authorizing the Mayor to execute the Agreement on behalf of the City."

Roll Call Vote ☒ required. ☐ not required.

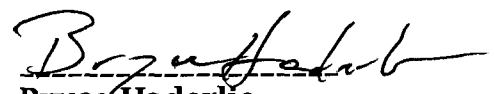
Prepared by:


Robert Thorup
Deputy City Attorney

Reviewed By:


Tom Burdett
Development Dir.

Recommended By:


Bryce Haderlie
Interim City Manager

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 14- 220

**A RESOLUTION AUTHORIZING THE EXECUTION BY THE MAYOR OF A
DEVELOPMENT AGREEMENT WITH GARDNER VILLAGE LC.**

Whereas, the City Council ratified the Planning Commission's approval of the Station at Gardner Village' density as proposed in its Preliminary Development Plan with conditions; and

Whereas, one of the conditions imposed by the City Council was the execution of a Development Agreement governing the development on the NE corner of 7800 South and 1300 West; and

Whereas, such Development Agreement has been prepared and executed by Gardner Village LC; and

Whereas, the Mayor is authorized to execute Development Agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Development Agreement by and between Gardner Village LC and the City governing the development on the NE corner of 7800 South and 1300 West is approved.

Section 2. The Mayor is hereby authorized and directed to execute the agreement.

Section 3. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 3rd day of December, 2014.

CITY OF WEST JORDAN

ATTEST:

By: _____
Mayor Kim V. Rolfe

MELANIE BRIGGS, City Clerk

Voting by the City Council

"AYE"

"NAY"

Jeff Haaga

Judy Hansen

Chris McConnehey

Chad Nichols

Ben Southworth

Justin D. Stoker

Mayor Kim V. Rolfe

Recording Requested By and
When Recorded Return to:
West Jordan City
Attention: Loretta Grundvig
8000 South Redwood Road
West Jordan, Utah 84088

For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT

This Development Agreement (this "**Agreement**") is made and entered into and made effective as of the date entered below (the "**Effective Date**"), by and among West Jordan City, a municipality and political subdivision of the State of Utah (the "**City**"), and Gardner Village L.C., a Utah limited liability company (the "**Developer**"). The City and the Developer may from time to time be collectively referred to as the "**Parties**."

RECITALS

A. WHEREAS the Developer has agreed to sell land outside of this Agreement to one or more entities (hereafter "**Colosimo**") for the purpose of constructing a 224 unit multifamily housing development in the City; and

B. WHEREAS controversy over the Colosimo development has focused neighbor and City attention on other properties (the "**Project**") now owned by Developer and which are made subject to this Agreement; and

C. WHEREAS the parties desire to solidify a certain level of planning for the Project and thereby to foreclose certain types of development and to confirm and enable other types of development thereon; and

D. WHEREAS Pursuant to the authority of *Utah Code Ann.* § 10-9a-102(2) and the specific provisions of the 2009 City Code, the City has determined to enter into this Agreement with Developer for the purpose of formalizing certain limitations of Developer with respect to the Project, and such other matters as the City and the Developer have agreed.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I LEGAL AUTHORITY AND PURPOSE

- 1.1 **City Laws and Purpose.** Each of the Parties represents to the other that it has the legal authority to enter into and perform its obligations under this Agreement and that this Agreement effectuates the above-referenced public purposes, objectives and benefits while appropriately reserving the City's legislative powers as set forth in Section 1.2 below.
- 1.2 **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of the police power of the City in enacting generally applicable land use laws after the date of this Agreement.
- 1.3 **Conditions Precedent.** Each of the City and Developer is entering into this Agreement in anticipation of the satisfaction of certain conditions precedent, which, if not satisfied, will frustrate the purposes of this Agreement. Accordingly, if the Conditions Precedent are not satisfied or otherwise waived by the Parties, this Agreement shall be rendered null and void and none of the parties hereto shall have any further obligation to the other arising out of this Agreement. The Parties recognize that some of the Conditions Precedent may be satisfied contemporaneously with the execution and City-approval of this Agreement, but such Conditions Precedent have been identified herein for purposes of setting forth the intent of the Parties. For purposes of this Agreement, the following shall constitute the "**Conditions Precedent**":
 - 1.5.1 the final non-appealable approval and acceptance of this Agreement by the City Council; and,
 - 1.5.2 the City Council's final non-appealable approval of the density approved by the City Planning Commission for the Colosimo preliminary development plan, as may be amended from time to time.

ARTICLE II PROJECT DEVELOPMENT

2.1 Developer Obligations.

2.1.1 Conveyance or Dedication of Required Easements.

Developer shall convey or dedicate to the City or other applicable utility provider at no cost such required utility easements on or across the Project as are necessary to facilitate the extension of required utility services to and throughout the Project.

2.1.2 Access Roads. Developer shall design, construct and dedicate to the City any and all access road(s) necessary for access to and from the Project for purposes of public and emergency access. All access roads shall be completed in accordance with Section 2.1.3.

2.1.3 Public Streets, Culinary Water, Sanitary Sewer and Stormwater Improvements. Developer shall design, construct and dedicate to the City all public streets and other public infrastructure required by the 2009 City Code and City standards as shown on approved Project development documents. (hereinafter referred to as the “Public Improvements”).

A. Access and Connecting Roads. Access and connecting roads will provide for safe and efficient circulation within, and adequate entrances and exits for the Project. All access and connecting roads shall be completed in accordance with approved plans and specifications submitted in connection with one or more subdivision plats for the various phases of the Project as set forth in the approved Development Documents.

B. Transportation, Culinary Water, Sanitary Sewer and Stormwater Master Plans. Without limiting the foregoing, the Developer shall be required to construct, or to arrange for the construction of, all master planned streets, culinary water, sanitary sewer and stormwater improvements running along or through the Project. This provision will operate in conjunction with the existing City requirements generally for performance bonds.

C. 1300 West Widening Project. As an example of the Developer's duty under subpart 2.1.3 B, Developer shall consult with the City prior to any construction on Remainder Parcel B in order to assure that any property as may be necessary for the City's scheduled widening of 1300 West at the same corner will be made available to the City.

2.1.4 Maintenance of Detention Basins, Planters, Trees and Other Landscaping in Street Median Spaces and Alongside Streets and Sidewalks Appurtenant to, or Within, the Development.

The Developer shall legally create and empower one or more property owner associations in connection with the Project and shall impose upon one or more of these associations the long term and permanent responsibility for the maintenance of all detention basins within the project area. Landscaping that exists along streets and sidewalks including public rights-of-way will be maintained by Developer and/or by one or more property owner associations to be created by Developer; provided, however, that the City shall maintain all park strips and landscaping along arterial and collector roads so long as the materials used for such park strips and landscaping are according to City prescription. No certificate of occupancy will be issued in connection with any property as to which a property owners association is to be created to maintain any improvements within and appurtenant to the Project without demonstrated proof of the legal organization and existence of each such property owner association.

2.1.5. Indemnification and Risk.

A. Developer to Indemnify the City. Developer shall, at all times, protect, indemnify, save harmless and defend the City and its agents, employees, officers and elected officials from and against any and all claims, demands, judgments, expense, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the parties hereto and their employees, which may arise out of any act or failure to act, work or other activity related in any way to the Project, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the work/development contemplated by this Agreement. This indemnification

provision shall not apply to any claims or liabilities that are unrelated to the Project or this Agreement.

B. Builder's Risk of Loss. Developer assumes the risk of loss for any damage or loss to the covered improvements by any means or occurrence until final acceptance of the covered improvements as evidenced by written approval of the City Manager.

2.2 Provision of Certain Utility Services. The City agrees that it shall make available (subject to extension of the City's system by Developer, application for service, issuance of applicable permits and payment of connection fees and applicable commodity usage rates) culinary water, sanitary sewer and storm water, as well as garbage collection on public streets for residential properties and related services provided by the City to its citizens generally. Culinary water, sanitary sewer and storm water utility services will be provided through delivery and retention systems constructed by the Developer as depicted in the Project development documents.

2.3 Parks, Trails and Pathways. The Project development documents may provide for public use spaces consistent with the requirements of the 2009 City Code and the West Jordan Trails & Open Space Master Plan. The Developer and City will cooperate in reasonably locating and/or refining the location of such open spaces, trails and pathway systems.

2.4 Restrictions on Development of the Project. The Project will be depicted on a filed subdivision plat at the time of development of any portion of the Project. Pending such a subdivision plat filing, the Project will be divided into parcels by metes and bounds description, and will be developed and governed by this Agreement, as follows:

2.4.1 Parcel A. Parcel A, sometimes called Remainder Parcel A, is described in Exhibit A attached hereto and hereby incorporated by this reference. Developer may sell or develop Parcel A for the purpose of constructing another mixed multi-family / commercial space building thereon. Parcel A may also be developed by Developer or sold to another person for the purpose of constructing commercial buildings, government buildings, office buildings, town homes, and/or senior housing facilities.

2.4.2 Parcel B. Parcel B, sometimes called Remainder Parcel B, is described in Exhibit A attached hereto and hereby incorporated by this reference. Parcel B may be developed by Developer or sold to another person for the purpose of constructing commercial buildings, government buildings, office buildings, town homes, and/or senior housing facilities. Parcel B shall not have constructed thereon multi-family or mixed multi-family / commercial, except as expressly permitted in the immediately preceding sentence.

2.5 City Obligations

2.5.1 Ingress/Egress into Parcel B. City shall allow a right-in/right-out ingress and egress onto 7800 South from Parcel B provided such outlet onto 7800 South is designed and built in accordance with City engineering and street construction requirements, and all such plans are approved by the City Engineer.

2.5.2 Land Use. The City will provide a zoning administrator letter of interpretation to the Developer concerning the scope of Title 13-5I- 4. This letter will include a reference to the list of permitted and conditional uses for the City Center Core (CC-C) for clarification purposes. In addition, the City will prepare, process and advocate the adoption of a text amendment to the 2009 City Code, title 13, to add certain neighborhood commercial uses into the City Center-Core zoning regulations for permitted and conditional uses. Such uses will include banks and credit unions with drive-up service windows, repair service, limited and laundry and dry cleaning, limited.

ARTICLE III IMPACT FEES; OTHER COSTS

The Developer will be assessed and required to pay impact fees calculated by the City in accordance with the Utah Impact Fees Act. In addition, Developer will be responsible for paying all City fees and charges appropriately assessed to the Project, including payment of hourly charges for all internal expert reviews and involvement. Because impact fees are assessed at the time of development, impact fees may be assessed in each phase of the Project.

ARTICLE IV DEFAULT AND COSTS

4.1 Default. In the event of a failure by any party to comply with the commitments, limitations and obligations set forth herein, within thirty (30) days of written notice of such failure from the other party, the non-defaulting party shall have the right to pursue any or all of the following remedies, which right shall be cumulative:

4.1.1 To cure such default or enjoin such violation and otherwise enforce the requirements contained in this Agreement; and

4.1.2 To enforce all rights and remedies available at law and in equity including, but not limited to, injunctive relief, specific performance and/or damages.

4.2 Insolvency. Insolvency, bankruptcy or any voluntary or involuntary assignment by any party for the benefit of creditors, which action(s) are unresolved for a period of 180 days shall be deemed to be a default by such party under this Article IV.

4.3 Court Costs and Attorneys Fees. In the event of any legal action or defense between the Parties arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party shall be entitled, in addition to the remedies and damages, if any awarded in such proceedings, to recover their costs and reasonable attorneys' fees.

ARTICLE V ASSIGNMENT AND RECORDATION

5.1 Assignment and Transfer of Development. The Developer shall not assign its obligations under this Agreement or any rights or interests herein, and except as provided below shall not convey the Project or any portion thereof, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed if the proposed transferee: (a) shall have the qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken pursuant to this Agreement and any then applicable Development Documents; and (b) by instrument in writing, shall have expressly assumed all of the obligations of the Developer under this Agreement and any then applicable additional agreements and agreed

to be subject to all of the conditions and restrictions arising under this Agreement or any Development Documents.

If only a portion of the Project is assigned and/or conveyed under this section 5.1, a reasonable allocation of the Developer's duties appurtenant to that portion will be made.

Developer agrees that any Developer responsibility for constructing public improvements in connection with the Project as originally presented and approved, and as agreed to herein, cannot be avoided by assigning portions of the Project to one or more third parties and then claiming that Developer's building of the required public improvements is not justified by the impact of the remainder of the Project.

5.1.1 The provisions of this Section 5.1 shall not prohibit the granting of any security interests for financing the acquisition and development of the Project, subject to the Developer complying with applicable law and the requirements of this Agreement.

5.1.2 A change in the majority ownership or control of the Developer shall be deemed a transfer requiring the consent of the City pursuant to the requirements of this Section 5.1. Notwithstanding the foregoing sentence, a transfer of all or a portion of the Project or change in the majority ownership or control of the Developer is permitted without the City's or Agency's consent under the following circumstances: (i) a transfer occurs to an entity that is an affiliate of the Developer, (ii) a transfer or change in ownership occurs as a result of a merger or acquisition of Developer resulting in Developer and its principal(s) having the majority interest and control of the succeeding or resulting entity, and/or (iii) a transfer occurs only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer, or its permitted successor in interest, to perform its obligations under this Agreement or any of the Development Documents. If as a result of any of these described actions one or more new principals become associated with the Project, such principals shall sign a counterpart of this Agreement evidencing their personal guaranty of the Developer's obligations hereunder.

5.1.3 In the event of a City approved transfer of any portion of the Project and upon assumption by the transferee of the Developer's obligations under this Agreement and the approval of the applicable development documents, the respective transferee shall have the same rights and obligations as the Developer under this Agreement, and the Developer shall be released from any further obligations with respect to that portion of the Project, provided that any successor shall first execute and deliver such agreements and instruments as the City may require to bind the successor under the terms of this Agreement and any related and subsequent agreements between the parties.

5.2 **Recordation.** After its execution and approval by the City Council, this Agreement shall be recorded in the office of the County Recorder at the expense of the Developer. Each commitment and restriction on development set forth herein shall be a burden on the real property constituting the Project, shall be appurtenant to and for the benefit of the City and shall run with the land.

ARTICLE VI GENERAL MATTERS

6.1 **Amendments.** Any alteration or change to this Agreement shall be made only after complying with the same procedures followed for the adoption and approval of this Agreement.

6.2 **Captions and Construction.** This Agreement shall be construed according to its fair and plain meaning and as if prepared by all Parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. Furthermore, this Agreement shall be construed so as to effectuate the public purposes, objectives and benefits set forth herein. As used in this Agreement, the words "include" and "including" shall mean "including, but not limited to" and shall not be interpreted to limit the generality of the terms preceding such word.

6.3 **Laws and Forum.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns, and shall be construed in accordance with Utah law. Any

action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Salt Lake County, Utah.

- 6.4 Legal Representation.** Each of the Parties hereto acknowledge that they either have been represented by legal counsel in negotiating this Agreement or that they had the opportunity to consult legal counsel and chose not to do so. In either event this Agreement has no presumptions associated with the drafter thereof.
- 6.5 Non-Liability of City Officials.** No officer, representative, agent or employee of the City shall be personally liable to the Developer or any successor in interest or assignee for any obligation(s) arising under the terms of this Agreement.
- 6.6 No Third Party Rights.** Unless otherwise specifically provided herein, the obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any other persons or third parties.
- 6.7 Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars; civil commotions; fires, floods, earthquakes or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage. Any party seeking relief under the provisions of this paragraph must have notified the other party in writing of a force majeure event within thirty (30) days following occurrence of the claimed force majeure event.
- 6.8 Notices.** All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed as follows:

City: City of West Jordan
8000 South Redwood Road
West Jordan, Utah 84088
Attention: City Manager

Developer: Gardner Village L.C.
1100 West 7800 South
West Jordan, Utah 84088
Attention: Joe Long, Manager

Such addresses may be changed by notice to the other party given in the same manner as above provided. Any notice given hereunder shall be deemed given as of the date delivered or mailed.

6.9 Entire Agreement. This Agreement, together with the Exhibits that may be hereafter attached hereto through amendment, documents referenced herein and all regulatory approvals given by the City for the Project, contain and constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or understandings between the Parties which are not contained in such agreements, regulatory approvals and related conditions. It is expressly agreed by the Parties that this Agreement and the additional agreements between the Developer and the City, as contemplated and referred to elsewhere in this Agreement, are intended to and shall govern the development of this Project.

6.10 Effective Date. This Agreement shall be effective upon the signing and execution of this Agreement by all Parties which, upon its occurrence, shall be deemed to have occurred as of the Effective Date.

6.11 Termination. This Agreement shall terminate upon mutual written agreement of the parties hereto, failure of the Conditions Precedent to occur, or 10 years after the Effective Date, whichever occurs first.

6.12 Further Action. The Parties hereby agree to execute and deliver such additional documents and to take all further actions as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

6.13 Effect of Agreement; Release of Claims.

(a) Nothing in this Agreement shall be construed to relieve the Parties of any obligations imposed by Federal or State laws, City and County ordinances, regulations, or standards, and the Parties covenant to obey all such laws, rules and regulations.

(b) Developer hereby releases and waives any and all claims Developer may have against the City with respect to any land use application submittals, acceptances, approvals, denials or processing with respect to the Project occurring prior to or as of the Effective Date. It is the expectation of the Parties that Developer will bring to the attention of the City at the time any Project-related requirement is imposed on Developer any belief by Developer that such a requirement is contrary to law duty or contract; and that Developer will press any such legal challenge at that time and prior to complying or agreeing with the same, such that Developer and the City shall have had ample opportunity prior to signing this Agreement or any amendment thereto to resolve alleged illegalities, breaches of contract or breaches of duty, and thus Developer in good faith is able to execute this Agreement or any amendment containing the foregoing waiver of claims.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Development Agreement.

WEST JORDAN CITY, a municipality and
political subdivision of the State of Utah

By: _____
Kim V. Rolfe, Mayor

ATTEST:

Approved as to legal form:

Melanie Briggs, City Recorder

City Attorney

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this ____ day of _____, 2014, before the undersigned notary public in and for the said state, personally appeared Kim V. Rolfe, known or identified to me to be the Mayor of West Jordan City and the person who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Utah
Residing at: _____
My Commission Expires: _____

GARDNER VILLAGE L.C.,
a Utah limited liability company,

By _____

Print Name: Joseph Long

Its: Manager

By _____

Print Name: Angela Seeley

Its: Manager

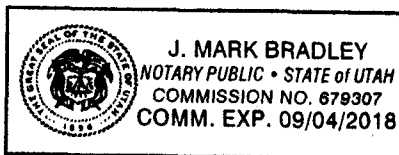
Date November 19th, 2014

DEVELOPER ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this 19 day of November, 2014, before the undersigned notary public in and for the said state, personally appeared Joseph Long and Angela Seeley and, known or identified to me to be the managers of Gardner Village L.C., and the persons who executed the foregoing instrument and acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



J. Mark Bradley
Notary Public for Utah

Residing at: Davis County
My Commission Expires: 9-4-2018

EFFECTIVE DATE: _____

EXHIBIT “A”

**Gardner Mill
Remainder Parcel A**

October 15, 2014

A part of the Southwest Quarter of Section 26, and the Northwest Quarter of Section 35, Township 2 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah:

Beginning at a point located 206.25 feet North along the Section Line, and 374.11 feet East from the Southwest Corner of said Section 26; and running thence East 172.79 feet; thence South $72^{\circ}37'44''$ East 31.06 feet; thence South $0^{\circ}25'49''$ West 307.02 feet; thence South $14^{\circ}34'27''$ West 38.67 feet to the North Line of 7800 South Street; thence Northwesterly along said North Line the following two courses: North $78^{\circ}21'35''$ West 26.00 feet; and North $73^{\circ}47'35''$ West 174.11 feet; thence North $0^{\circ}25'49''$ East 299.88 feet to the point of beginning.

**Contains 66,298 sq. ft.
or 1.522 acres**

**Gardner Mill
Remainder Parcel B**

October 15, 2014

A part of the Southwest Quarter of Section 26, and the Northwest Quarter of Section 35, Township 2 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah:

Beginning at a point located 206.25 feet North along the Section Line, and 33.00 feet East from the Southwest Corner of said Section 26; and running thence East 341.11 feet; thence South $0^{\circ}25'49''$ West 299.88 feet to the North Line of 7800 South Street; thence North $73^{\circ}47'35''$ West 338.69 feet along said North Line; thence North $33^{\circ}33'54''$ West 24.65 feet to the East Line of 1300 East Street; thence North 184.80 feet along said East Line to the point of beginning.

**Contains 85,153 sq. ft.
or 1.955 acres**